

Serial No. 10/080,568
Docket No. YOR919980324US2

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Stephen M. Gates, et al.

Serial No.: 10/080,568 Group Art Unit: 2814

Filed: February 25, 2002 Examiner: Phat X. Cao

For: FORMATION OF ARRAYS OF MICROELECTRONICS ELEMENTS

Honorable Commissioner of Patents
Alexandria, VA 22313-1450

PETITION UNDER 37 C. F. R. §1.181 FOR WITHDRAWAL OF
NOTICE OF DEFECTIVE APPEAL BRIEF, ENTRY OF
AFTER-FINAL AMENDMENT, AND FOR AN EXAMINER'S ANSWER

Sir:

Comes now the Applicant and for this Petition states as follows:

1. That an Amendment which canceled claim 36 and incorporated the subject matter of claim 36 verbatim into independent claims 11, 26 and 38 was filed on February 28, 2005. However, in an Advisory Action dated March 17, 2005, the Examiner stated that he refused to enter the Amendment because the proposed amendments "raise new issues that would require further consideration and/or search".
2. That the Amendment filed herein on February 28, 2005 clearly does not "raise new issues" as alleged by the Examiner. Therefore, on May 13, 2005, Appellant filed a Second After-Final Amendment which was substantially the same as the February 28th Amendment, to request that the Examiner reconsider his unreasonable refusal of entering the February 28th Amendment, and on May 16, 2005, Appellant filed an Appeal Brief presuming entry of the May 13, 2005 Amendment;
3. That in a Notice of Non-Compliant Appeal Brief dated July 14, 2005, the

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Examiner again refused to enter the After-Final Amendment filed on February 28, 2005 and the Second After-Final Amendment filed on May 13, 2005.

4. That contrary to the Examiner's assertions in the Advisory Action dated March 17, 2005, the February 28, 2005 Amendment and contrary to the Examiner's assertions in the Notice of Non-Compliant Appeal Brief, the Amendment filed on May 13, 2005 clearly did not raise new issues and did not require further search by the Examiner, and therefore, should have been entered by the Examiner.

Therefore, Appellant respectfully requests the following:

- a) that the Notice of Non-Compliant Appeal Brief be withdrawn,
- b) that the Amendment of February 28, 2005 (or the Second After-Final Amendment filed on May 13, 2005) be entered; and
- c) for an Examiner's Answer in response to the Appeal Brief filed on May 16, 2005.

Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Assignee's Deposit Account number 50-0510

Respectfully submitted,

Dated: 8/15/05



Phillip E. Miller

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Petition was filed by facsimile with the United States Patent and Trademark Office, Examiner Phat Cao, Group Art Unit # 2814 at fax number 571-273-8300 this 15th day of August, 2005.



Phillip E. Miller
Reg. No. 46,060

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